Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Janice E. Mayo,

Petitioner

v.

CitiBank South Dakota, N.A.

Respondent

On Petition For Writ Of Certiorari
To The Appellate Court of Illinois
Fourth District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is the treatment of Pro Se defendants by Illinois courts so blatantly biased and unfair that it violates the 14th Amendment's "equal protection of the laws" provision?

2. If Citibank refuses to produce the original credit card agreement with terms, conditions and disclosures that show how the interest rate is determined, are they then allowed to charge any interest rate they choose? Can Citibank charge as high as 40% interest on a credit card account, because it refused to produce a contract or agreement specifying an interest rate any higher than 4.9%? Does the Truth in Lending Act apply in Illinois?

3. Is a Pro Se Defendant entitled to the same "equal protection of the laws" regarding Illinois Supreme Court rules of discovery and disclosure of witnesses and documents that other litigants are allowed?

4. Whether this action was an attempt by Citibank and its collection attorneys to collect monies in direct violation of the Truth in Lending Act and the Fair Debt Collection Practices Act.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Janice E. Mayo respectfully petitions for a writ of certiorari to review the opinion of the Illinois Appellate Court, Fourth District.

OPINIONS BELOW

The Illinois Appellate Court, Fourth District's opinion is unreported but attached in appendix page A-1

The Illinois Supreme Court's denial of Petitioner/Defendants Petition for Leave to Appeal is unreported but attached in appendix page A-18

The Illinois Appellate Court Fourth District's denial of Petitioner/Defendants Petition for Rehearing is unreported but attached in appendix page A-19

The Livingston County Circuit Court's order is unreported but attached in appendix page A-21

JURISDICTION

On June 20, 2005, Respondent brought suit against Petitioner in the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois. A final judgment was entered on March 30, 2007 in favor of the Plaintiff/Respondent and a Post Trial Motion to reconsider denied on October 10, 2007.

Illinois Supreme Court Rules 301 and 303 confer jurisdiction for review on the Illinois Appellate Court, Fourth District. The Appellate Court entered its judgment in the case affirming the trial court's decision on September 11, 2008. A Petition for Rehearing was filed October 1, 2008, which was denied October 8, 2008

Illinois Supreme Court Rule 315 confers jurisdiction to review the Illinois Appellate Court's decision on the Illinois Supreme Court. Petition for Leave to Appeal. was denied on January 28, 2009.

The jurisdiction of this Court to review the order of the Illinois Appellate Court, Fourth District, and decision of the Illinois Supreme Court to deny review, is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

United States Constitution, 14th Amendment

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

I. Petitioner did not raise the issue of the "equal protection of the laws" provision of the 14th Amendment until her Petition for Leave to Appeal to the Illinois Supreme Court because:

> A. Petitioner assumed that she would be treated unfairly in the Livingston County Circuit Court as a pro se defendant, but would prevail once the facts were properly presented.
>
> B. Petitioner did not consider one or two unfair rulings by the Circuit Court as a violation of the 14th Amendment, but rather the cumulative effect of many rulings and explanations for those rulings of the Circuit Court and Illinois Appellate Court.

II. Plaintiff brought an action on June 20, 2005 to collect from the Petitioner/Defendant the sum of $18,203.31 plus interest and Plaintiff's costs of suit, as a result of Defendant's use of a Citibank credit card. The discovery process (Illinois Supreme Court Rule 201) lasted from July 21, 2005 until September 22, 2006. The Petitioner/Defendant served on Citibank, Requests for Admission (Ill. S.C. Rule 216), Interrogatories (Ill. S.C. Rule 213) and Requests for Production of Documents (Ill. S.C. Rule 214).

> A. The Petitioner/Defendant's Requests for Admission July 21, 2005 included, "11. Admit that plaintiff is required to disclose to

defendant all material obligations relating to the disputed account." The question was stricken by Circuit Court Judge Robert M. Travers. The disclosure provisions of the Truth in Lending Act U.S.C. §1637 were in effect stricken by Judge Travers.

B. The Petitioner/Defendant's interrogatories July 21, 2005 included "5. How much money has the plaintiff been paid by the defendant since the account was opened?" This question was allowed by the court, but Citibank refused to provide an answer in their Answers to Interrogatories or their Supplemental Answers to Interrogatories. Citibank claimed "...records are only kept pursuant to federal statutes for seven (7) years." The account had not been open for a complete 7 years at the time suit was filed, so they should have a complete record of the account.

C. Pursuant to Illinois Supreme Court Rule 213 the Petitioner/Defendant's interrogatories July 21, 2005 included,

> 7. Identify each witness, whether expert or otherwise, you intend to call at trial. For each witness state: *Note: This interrogatory Answer shall be prepared and separately signed by each expert as required by the rules.*

> (a) The witness's name, address, and occupation;
>
> (b) The name and address of the firm employing the expert, if any;
>
> (c) The expert's area of expertise;
>
> (d) Subject matter upon which the witness is expected to testify;
>
> (e) Opinions and conclusions expected to be rendered by said witness; and
>
> (f) The grounds upon which said opinions and conclusions are based.

Citibank responded on May 24, 2006, "ANSWER #7: No witness has yet been assigned. Trial assignments occur, seven days prior to trial. Any witness will be able to testify about balance due, account creation, account maintenance, record keeping process."

Citibank responded on September 20, 2006, "Answer: Christina Hall, 7930 NW 110th Street, Kansas City, Mo, 64195." No other witness was identified.

Interrogatory "9. Which specific terms of the purported credit agreement do you allege that the defendant breached?" was stricken

by the Court. Wasn't that very relevant to the case?

D. Pursuant to Illinois Supreme Court Rule 214 the Petitioner/Defendant's Requests for Production of Documents July 21, 2005 included a request for "Certified copies of the accounting general ledger records, showing the entire history of the disputed credit account, from origination through charge off and/or sale." Citibank never produced the entire record.

E. The Circuit Court declared discovery complete on September 22, 2006 over the objection of the Petitioner/Defendant. Citibank never produced a document showing the terms and conditions that were in effect at the time the account was opened.

III. At the trial on January 10, 2007:

A. The Petitioner/Defendant objected to Citibank's witness Christina Hall, stating "...The plaintiff did not identify the controlled expert witness's qualifications as required by Rule 213(f)...." Citibank's attorney Mr. Gabor responded, "...she's not being offered as an expert. She's the records' custodian for the plaintiff. There's no expertise required, there's no special training required to do that." With that, the Court overruled the Petitioner/Defendant's objection. The witness gives her occupation as a "litigation analyst" who's duties are to

"review statements, records ... be able to soundly testify to those documents." Then the Plaintiff's attorney stated "In other words, you're a records' custodian. Is that correct?" To which the witness Hall answered "Yes". While an experienced attorney would have objected to such a blatantly leading question, the Plaintiff's attorney knew he could slip it past an inexperienced pro se defendant. Regardless, the witness Hall's testimony makes it clear that she is an expert witness, who reviews documents and records in preparation to her court testimony. Her description of her duties correspond to the Illinois Supreme Court Rule 213(f) definition of a "Controlled Expert Witness".

> (3) *Controlled Expert Witnesses.* A "controlled expert witness" is a person giving expert testimony who is the party, the party's current employee, or the party's retained expert. For each controlled expert witness, the party must identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.

The witness had no involvement in the day to day processing and record keeping of this account or any other account as part of the regular course of business. The witness testified that she reviewed the records of this account, only after the lawsuit had been filed. Illinois law (735 ILCS 5/8-401) allows a witness to:

> ... testify to his or her account book, or any other record or document and the items therein contained; that the same is a book, record, or document of original entries, and that the entries therein were made by himself or herself, and are true and just; or that the same were made by a deceased person, or by a disinterested person, a non-resident person of the state at the time of the trial, and where made by such deceased or non-resident person in the usual course of trade, and of his or her duty or employment to the party so testifying; ...

In *People v. Small*, 319 Ill.437, 477, 150 N.E. 435 (1926), the Illinois Supreme Court held bank records admissible on the basis of a foundation laid by the officers in charge of the records.

The witness Hall is not in charge of the persons entering data to the account records, in fact she testified that she doesn't even know anyone who has access to the server where that data is kept. She also testified that she doesn't even work for Citibank South Dakota N.A., but for Citicorp Credit Services, a service provider for Citibank South Dakota.

A lay opinion witness is limited to offering opinions predicated on his own personal knowledge, and may not under any circumstances testify based on a review of materials of which he has no "personal knowledge." *People v. Novak*, 163 Ill.2d 93, 103 (1994).

Witness Hall testified that she is a "litigation analyst" and her complete testimony proves that she is a highly trained and experienced expert in testifying in these types of cases. The Plaintiff's attorney's assertion that "There's no expertise required, there's no special training required to do that.", is ludicrous. The Plaintiff went to great lengths to avoid full disclosure of the "controlled expert witness" as required by Rule 213(f), to gain an unfair tactical advantage over the defendant.

Clayton v. County of Cook, 346 Ill. App. 3d 367, 381, 805 N.E. 2d 222,235 (2003) "Rule 213 is designed to give those involved in the trial process a degree of certainty and

predictability that furthers the administration of justice and eliminates trial by "ambush"."

Because of the deliberate, calculated disclosure violation which prejudiced the Defendant, witness Kristina Hall should not have been allowed to testify, and any documents that she authenticated should not have been entered into evidence.

B. Citibank's attorney introduced as evidence a copy of a "Balance Transfer Coupon" that was authenticated by witness Hall as an "application". The Petitioner/ Defendant objected,

> The best evidence rule is violated, the copy is not legible, you can't read many of the sentences on there. It's only one side of the page; there is nothing on the other side to show the disclosure statement, showing what the other interest rates would be after the 18 months or any other fees or service charges that would be applied.

The Court responded, "And I'm not as concerned about the best evidence rule as I am concerned about the suggestion that there are other terms to the contract that are not included with this. I mean obviously, the

whole contract would need to be submitted...." The whole document was never submitted, but it was allowed as evidence.

C. Incomplete copies of monthly statements were allowed as evidence over the objection of the Petitioner/Defendant. They did not show a complete record of the account. They showed various interest rates as high as 40.518%.

D. Citibank introduced into evidence an unsigned "Card Agreement" dated 2003 , and witness Hall testified that it had been mailed to Mayo in December 2003. The Court overruled the Petitioner/Defendant's objection. The Illinois Appellate Court's order states, "the evidence reflects Mayo accepted Citibank's modifications to the parties' agreement by her continuing use (sic) the credit card." By the Ill. Appellate Court's own reasoning, this December 2003 agreement, is not valid because the Plaintiff did not show that the Defendant ever used the "card" after December 2003. This Appellate Court's reasoning is faulty because there is no evidence that shows the "card" was ever used after December 2003, in fact the "Statements" introduced as evidence by Citibank prove that it was not used after December 2003.

The Plaintiff never provided the court with the terms and conditions or "Card

Agreement" in effect when the account was opened. Citibank's witness Hall testified, "We have them; I did not bring them today." The Plaintiff chose to not show the court the original terms and conditions of the 1998 contract. The Plaintiff's evidence "Statements" show that they have charged the Defendant interest rates as high as 40.518% (July 9 – August 8, 2003) with no legal justification to do so. The Illinois Appellate Court's order says:

> Contrary to Mayo's assertions, we cannot conclude, from this record, that applicable interest rates were impermissibly absent from the "agreement creating the debt." See 15 U.S.C. §1692f (1) (a debt collector may not collect any amount, including interest, "unless such amount is expressly authorized by the agreement creating the debt or permitted by law"). (A-17)

E. Citibank's attorney called the Petitioner/Defendant Janice Mayo as a witness.

> THE DEFENDANT: I object, your Honor. I was not listed as a witness. During the interrogatories, you're required

> to identify each witness at that time; and I was not identified.
>
> THE COURT: All right. Are you indicating this comes as a surprise?
>
> THE DEFENDANT: Yes, it does, your Honor.
>
> THE COURT: All right. I'm going to discount that statement. I don't believe that it could be a surprise in this particular matter; so, I'm going to overrule your objection.

In her brief to the Illinois Appellate Court the Petitioner/Defendant cited:

> *American Service Insurance Company vs. Leslaw Olszewski,* 324 Ill.App.3d 743, 756 N.E.2d 250, 258 Ill.Dec. 268 (2001) "A party is required under Supreme Court Rule 213(f) to name and identify trial witnesses "together with the subject of their testimony." 177 Ill. 2d R. 213(f). "The rule is not limited to requiring witness disclosure only of those witnesses who may cause unfair surprise."

> the rules of court we have promulgated are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written. *Bright v. Dicke,* 166 Ill. 2d 204, 210, 652 N.E.2d 275, 209 Ill. Dec. 735 (1995).

The Illinois Appellate Court in it's order cited:

> Rule 213's purpose "is to avoid surprise and to discourage tactical gamesmanship." *Sullivan v. Edward Hospital,* 209 Ill. 2d 100, 111, 806 N.E.2d 645, 653 (2004).
> "[Its] disclosure requirements are mandatory and subject to strict compliance by the parties." *Sullivan,* 209 Ill. 2d at 109, 806 N.E.2d at 651.

Doesn't "strict compliance by the parties" apply to the world's largest bank the same as it does to a pro se defendant? Clearly the testimony of Petitioner/Defendant Janice Mayo should not have been allowed.

F. Later in the trial the judge seemed confused about the calculation of interest rate:

> THE COURT: ...I took an opportunity here during the testimony to review Plaintiff's Exhibit No. 3, which is the card agreement on which this complaint is based. We do not have the card agreement terms and conditions, whatever you want to call it, from 1998; ... specifically Mr. Gabor, tell me what the interest rate is on any date that this particular card was in existence.
>
> MR. GABOR: Your Honor, my client's indicated that the interest rate on purchases is apparently not contained in this agreement. Rather it is shown on the statements themselves.
>
> THE COURT: ... so; I'm telling both of you, prepare a summary of what you believe is owed, a summary of your arguments -- and this is a numerical argument -- as to what you believe is owed. And specifically, to the plaintiff, break it down as to the amounts that

> are owed on principal and the amounts that are owed on interest and what the applicable rate would be; and if there is a default that triggers an applicable rate and the prime rate needs to be determined, write that down so I can see it.

Citibank filed a "Plaintiff's Summary as to Amount Owed from Defendant" February 19, 2007. In it they say that the interest rate for purchases is 9.99% + the prime rate. They attached to their "summary" one page of a "Notice of Change in Terms to Your Card Agreement" that says the rate for purchases is prime rate + 5.99%, but this was never authenticated nor entered as evidence. So it appears from above that the Judge had no idea what the interest rate should be, and Citibank doesn't seem to know either.

This would have been clear if Citibank and it's witness Hall had produced the terms of the original 1998 agreement, instead of testifying, ""We have them; I did not bring them today."
The Illinois Appellate Court addressed this issue by stating:

> Contrary to Mayo's assertions, we cannot conclude, from this record, that applicable interest

rates were impermissibly absent from the "agreement creating the debt." See 15 U.S.C. §1692f (1) (a debt collector may not collect any amount, including interest, "unless such amount is expressly authorized by the agreement creating the debt or permitted by law").

IV. Subsequent to trial:

Judgment in favor of the Plaintiff was entered on March 30, 2007 (A. 21).

On April 18, 2007, the Court denied Defendant's February 28, 2007 Motion to Strike Witness Testimony.

Defendant filed Motion to Reconsider on April 23, 2007, which was argued and denied on October 10, 2007.

REASONS WHY CERTIORARI SHOULD BE GRANTED

The Court should grant review of this case because it potentially affects millions of consumers. It will also affect the way pro se litigants in civil matters are treated in courts in every state.

I. ILLINOIS COURTS ROUTINELY DENY PRO SE LITIGANTS THEIR 14th AMENDMENT RIGHT TO "EQUAL PROTECTION OF THE LAWS."

Of all of the laws of this land, probably one of the most important is the 14th Amendment to the United States Constitution:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Doesn't it mean that when I go into any court in this country, I will be treated the same as the largest bank in the country? Doesn't it mean that Citibank must comply with federal and state laws, the same as a pro se litigant?

Illinois courts routinely take reasonable laws and rules, and apply them selectively and unfairly

depending on who the litigant is. The Illinois Appellate Court stated:

> We note Mayo appeals pro se and Citibank has failed to file an appellee's brief.
> "A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment." *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1019, 887 N.E.2d 14, 19 (2008). (A-6)

Regardless the Appellate Court "argued" for the first time, on behalf of the Plaintiff that the Defendant used the credit card after the December 2003 agreement was mailed to her (A-15), even though there was no evidence or testimony to support that conclusion. No other agreement was admitted into evidence.

The Illinois Appellate Court in their order also said:

> The best evidence rule "requires an original writing be offered as evidence over secondary evidence." *Poelker v. Warrensburg Latham Community Unit School District No. 11*, 251 Ill. App. 3d270, 288, 621 N.E.2d 940, 954 (1993). "When a party seeks to introduce secondary evidence of a writing, he must first establish the

> prior existence of the original, its loss, destruction or unavailability, and that he diligently tried to procure the original." *Poelker*, 251 Ill. App. 3d at 288, 621 N.E.2d at 954.
> Mayo provided no argument to support her position that the "balance transfer coupon" violates the best evidence rule. ... Points that are not argued are waived. 210 Ill. 2d R. 341 (h) (7). (A-17,18)

But in her brief to the Illinois Appellate Court the Petitioner/Defendant had previously argued:

> The Plaintiff's Exhibit 1 "Balance Transfer Coupon" dated Aug. 8, 1998, should not have been allowed as evidence because it is a poor quality, partially illegible copy of only a portion of the alleged document. It violates the Best Evidence Rule. In such a case, the proponent must prove the prior existence of the original, its unavailability, and the proponent's own diligence in attempting to procure the original. *Electric Supply Corp. v. Osher*, 105 Ill. App. 3d 46,48 (1982).

Citibank's witness Hall testified:

> The original document is kept, has since been destroyed since this was made, as we keep our records for

> seven years, the originals; so, all I have access to at this point is the copy.

That means that if the "Balance Transfer Coupon" was dated August 8, 1998, then it was destroyed after Defendant's discovery requests were served on July 21, 2005. The Plaintiff did not dispute those facts in a reply brief. This shows how biased the Illinois Appellate Court is, and how they unequally apply the rules and laws, depending on the status of the litigant.

II. CERTIORARI SHOULD BE GRANTED TO ENSURE COMPLIANCE BY ILLINOIS COURTS AND CITIBANK, WITH FEDERAL AND STATE CREDIT AGREEMENT LAWS.

No one should be bound by unknown terms in an unseen contract.

> Although ambiguity in contracts will generally be construed against the party who drafted the contract... To have an enforceable contract, the parties must exchange consideration. *Kafka v. Bellevue*, 999 F2d 1117, 1123 (7th Cir. 1993).
>
> ...it is a fundamental principle of contracts that in order for a contract to be binding and enforceable, there must be a meeting of the minds on all essential terms and obligations of the

> contract. *Browning v. Peyton*, 918 F2d 1516, 1521 (11th Cir. 1990).

Citibank refused to produce the original credit card agreement. Federal and Illinois courts have consistently ruled that a credit card company's initial disclosures must disclose the interest rate and if variable, how that rate is determined, 12 C.F.R. § 226.6(b)(1), 15 USC 1637(a), *Swanson v. Bank of America* 566 F.Supp.2d 821, 825, *Hutcherson v Sears* 342 Ill.App.3d 109,113,128, 793 N.E.2d 886, 888, 899.

In the instant case, does the original agreement have a change of terms clause in it? Maybe it does, or maybe it doesn't. The copy of a "Balance Transfer Coupon" that Citibank introduced in evidence as the instrument creating the debt specifies 4.9% interest but doesn't give any other terms or conditions. The Livingston County Circuit Court said "We do not have the card agreement terms and conditions" and the Illinois Appellate Court said:

> Although it never submitted the original terms and condition applicable to Mayo's account ... Contrary to Mayo's assertions, we cannot conclude, from this record, that applicable interest rates were impermissibly absent from the "agreement creating the debt". (A-16)

That's right, Citibank can charge 20% or 30% or 40.518% because of the terms and conditions that as Citibank's witness testified "We have them; I did not bring them today." Using that logic, Citibank could charge 100% or 200% and break your legs if you don't pay; and the Illinois Appellate Court could say "we cannot conclude, from this record, that applicable interest rates were impermissibly absent from the "agreement creating the debt."" as long as they never produce the agreement creating the debt.

The Illinois Appellate Court, First District, Third Division in *Hutcherson v Sears* 342 Ill.App.3d 109, 113, 128 793 N.E.2d 886, 888, 899 makes it clear that a "change of terms" provision in the "original credit card agreement" is required for the credit card issuer to make any subsequent changes in any terms. The Illinois Supreme Court let stand that decision. In the instant case Citibank produced no "original credit card agreement" and no "change of terms" provision, but the Ill. Appellate Court, Fourth District said that's okay, and the Illinois Supreme Court let stand that decision.

Citibank stands to make billions of dollars, from millions of consumers to solve their financial problems by raising interest rates as high as possible, regardless of what their initial disclosures say.

III. ILLINOIS COURTS DENY FULL DISCLOSURE TO PRO SE LITIGANTS IN

VIOLATION OF THE 14th AMENDMENT AND STATE AND FEDERAL DISCOVERY RULES.

In this case the Petitioner/Defendant was not allowed to use the Illinois Supreme Court discovery rules to obtain the following information:

A. Admit that plaintiff is required to disclose to defendant all material obligations relating to the disputed account. This is TILA required disclosure, but Judge Travers would not allow the Petitioner/Defendant to ask that question in interrogatories.

B. How much money has the plaintiff been paid by the defendant since the account was opened? Judge Travers allowed this question, but Citibank refused to answer. What could be more relevant and important to this case?

C. Which specific terms of the purported credit agreement do you allege that the defendant breached? Judge Travers would not allow the Petitioner/Defendant to ask that question in interrogatories either.

D. Certified copies of the accounting general ledger records, showing the entire history of the disputed credit account, from origination through charge off and/or sale. Judge Travers allowed this request to produce, but Citibank refused to produce claiming they were destroyed after 7 years.

E. Witness disclosure information. The Livingston County Circuit Court disregarded the Illinois Supreme Court Rules on witness disclosure and Citibank intentionally failed to properly disclose its witnesses, who were allowed to testify, thereby prejudicing the defendant.

To disclose the Defendant as a witness, all the Plaintiff would have to do is type 10 letters on the answer, J a n i c e M a y o; which they never did in 14 months of attempts to evade answering the interrogatories. The Defendant went to trial, knowing without a doubt, that she would not be called to testify, but, SURPRISE!! She was anyway.

IV. REVIEW IS WARRANTED BECAUSE LOWER COURTS DISREGARDED CITIBANK'S VIOLATION OF THE TRUTH IN LENDING ACT AND THE FAIR DEBT COLLECTION PRACTICES ACT.

This is an attempt by Citibank South Dakota N.A., Citicorp Credit Services, and its attorneys, Friedman & Wexler, Brian Gabor, Harry N. Arger, and Dykema Gossett to collect an AT&T Universal Credit Card debt in direct violation of the Fair Debt Collection Practices Act because 40.518% interest rate is not "expressly authorized by the agreement creating the debt".

§ 803. Definitions (15 USC 1692a)

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

§ 808. Unfair practices (15 USC 1692f)

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is

> expressly authorized by the agreement creating the debt or permitted by law.

The action by Citibank also violates the Truth in Lending Act because the only initial disclosure they produced indicated 4.9% interest.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,
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IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

CITIBANK SOUTH DAKOTA, N.A., Plaintiff- Appellee,	) Appeal from) Circuit Court of) Livingston County) No. 05LM108
v.	)
JANICE E. MAYO, Defendant-Appellant.	) Honorable) Robert M. Travers) Judge, Presiding

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ORDER

Plaintiff, Citibank South Dakota, N.A. (Citibank), filed a complaint, seeking to recover the balance due on a credit card it issued to defendant, Janice E. Mayo. Following a bench trial, the trial court entered judgment against Mayo and in favor of Citibank in the amount of $17,853.31 Plus $350 in attorney fees. Mayo appeals, arguing (1) Citibank failed to establish the existence of a valid contract, (2) the court erred by allowing Citibank to call witnesses who were not disclosed in compliance with Supreme Court Rule 213 (f) (Official Reports Advance Sheet No. 26 (December 20, 2006), R. 213 (f), eff. January 1, 2007), (3) the court erred by admitting certain evidence, and (4) Citibank's complaint was filed in violation of the Fair Debt Collection Practices Act (15 U.S.C. §1692F (2004) and the Truth in Lending Act (15 U.S.C. §1637 (2004)). We affirm.

On June 20, 2005, Citibank filed a complaint, alleging it issued a credit card to Mayo upon her request and she agreed to pay all amounts charged by use of the credit card. It alleged Mayo incurred charges on the credit card and it sent her monthly statements demanding payment. Citibank claimed Mayo failed to make the requisite payments and owed it $17,853.31. Additionally, it alleged Mayo owed it $350 for attorney fees pursuant to the terms and conditions that governed the use of the credit card.

On January 10, 2007, a bench trial was conducted and Mayo appeared pro se. Citibank presented the testimony of Christina Paul. Paul testified she was a litigation analyst for Citicorp Credit Services Incorporated U.S.A. (Citicorp). Citicorp and Citibank were wholly owned subsidiaries of Citigroup. Paul testified Citicorp was the service provider for Citibank. She stated she was a records' custodian and her duties included reviewing statements and company records, supplying those documents upon proof required, and testifying to those documents.

Paul testified Citibank kept its records electronically. She reviewed Mayo's account with Citibank and identified a copy of the original application for an account signed by Mayo and dated August 8, 1998. The application contained Mayo's social security number, home and business phone numbers, a security password, household income, date of birth, and a request to process a balance transfer from another creditor. Paul stated she only had access to a copy of the application because

records were dept (sic) for only seven years and the original had been destroyed.

Paul acknowledged there may have been a back to the application but it would only have contained modified disclosures. She described modified disclosures as informing the customer "that the full terms and conditions would be issued at the time of the card issuance and that the annual percentage rates and any fees disclosed at that time are subject to change during that time period [.]" Paul asserted full disclosures were issued with the actual credit card, notifying the customer of the full terms and conditions. The full disclosures were not signed; however, by using the account, which Mayo did, she agreed to be bound by those terms and conditions.

Paul went on to testify that Mayo' balance transfer request was processed. The amount transferred was $7,000 and, over time, Mayo paid that full amount, resulting in a zero balance on her credit card.

Paul identified copies of original monthly statements issued to Mayo, beginning with a statement dated March 9 through April 9, 2001, and ending with a monthly statement dated April 7 through May 8, 2006. Paul testified Citibank compiled the statements at the end of the billing period for each month to show any activity during the billing cycle. The records were compiled and stored electronically and then printed at the closing date of the billing period and mailed to the customer. Paul stated an exact electronic copy of the original statement was kept on file. No one manually entered

the charges or payment information in the system. It was all done electronically.

Paul also testified regarding the server Citibank used to keep its electronic records. She testified the server was locked and in a location with security cameras. Only certain authorized personnel had access to the server. Further, she testified the statements were exact copies of statements sent to Mayo.

The first statement Paul identified showed a zero balance on the credit card and a credit of $48.03 owed to Mayo. Thereafter, the statements reflect Mayo incurred charges on her credit card and made payments to her account. The statements showed principal balance due, payments received, and applicable interest rates. According to Paul, Mayo never specifically disputed the charges, interest rates, or payment information reflected on her statements. Instead, she made only one general dispute in April 2004, regarding everything about the account.

Paul testified Mayo made payments on her account every month until she defaulted. Her last payment was received on February 2, 2004. After the April 7 through May 7, 2004, statement was issued, Citibank ceased collection activity and referred Mayo's account to outside counsel. The balance reflected on the April 7 through May 7, 2004, statement was $17,853.31. Paul testified, after the closing date of May 7, 2004, no additional charges were made to the account.

Paul further identified a copy of terms and conditions that were currently applicable to Mayo's account. She stated the document was mailed to

Mayo with her monthly statement in December 2003. Paul testified the terms and conditions would take effect unless the customer notified Citibank in writing that they wished to opt out. Mayo never took such action and continued to make payments to her account.

Additionally, Paul testified the credit card initially issued to Mayo was an AT&T Universal Platinum MasterCard. However, in February 2002, Universal National Bank merged with Citibank. All of Universal National Bank's assets and debts became Citibank's. Paul stated the merger information was disclosed to Mayo on her February 2002 statement.

Citibank called Mayo to testify as an adverse witness. She testified the signature appearing on the original 1998 application looked like her signature. She did not dispute that she signed that document, filled it out, or that she mailed it in to AT&T Universal to obtain a credit card. Sometime thereafter she received the credit card. She also transferred a $7,000 balance she owed on another account to her new credit card. At some point, she was able to pay that amount in full.

Mayo also did not dispute that she made the charges reflected on the monthly statements. Those charges were made after April 9, 2001. Mayo acknowledged that she owed something to Citibank but disputed the amount owed. She stated her sole dispute was that Citibank was charging her interest rates as high as 32% but she did not have a disclosure agreement giving them the authority to do that. Mayo agreed that the interest rates reflected on her monthly statements accurately reflected what

Citibank charged her and that she continued to make payments after the interest rates increased. She testified the only dispute she made to her account was in May 2004.

Citibank rested its case. Mayo made contemporaneous objections to each witness Citibank called and to each of its exhibits, but offered no evidence on her own behalf. The trial court requested each party prepare a summary of the amount each believed Mayo owed. Each party submitted a summary and, on March 30, 2007, the court entered judgment against Mayo and in favor of Citibank in the amount sought plus $350 in attorney fees.

On April 23, 2007, Mayo filed a motion to reconsider. On October 10, 2007, the trial court denied that motion.

This appeal followed. We note Mayo appeals pro se and Citibank has failed to file an appellee's brief.

"A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment." *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1019, 887 N.E.2d 14, 19 (2008). "[I]f the record is simple and the claimed errors are such that the reviewing court can easily decide them without the aid of an appellee's brief, that court should decide the merits of the appeal." *Benjamin*, 379 Ill. App. 3d at 1019, 887 N.E.2d at 19. "[I]f the appellant's brief demonstrates [p]rima facie reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed." *First Capitol Mortgage Corp. v.*

Talandis Construction Corp., 63 Ill.2d 128, 133, 345 N.E.2d 493, 495 (1976). Despite the lack of an appellee's brief, we review Mayo's claimed errors.

On appeal, Mayo first argues the trial court erred by ruling in Citibank's favor because Citibank never submitted a valid contract. She complains the written instrument Citibank submitted and upon which its claim was founded was a "balance transfer coupon" that failed to specify repayment or other terms. Further, she argues the "balance transfer coupon" fails to meet the requirements of the Truth in Lending Act (15 U.S.C. §1637 (2004)). Mayo also contends the "card agreement" Citibank submitted as evidence was invalid because the document it purported to be the parties' original contract contained no "change of terms" clause.

The basic ingredients of a contract include an offer, an acceptance, and consideration. *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 151,847 N.E.2d 99, 109 (2006). The issuance of a credit card does not create a contract and constitutes only an offer to extend credit. *Garber v. Harris Trust & Savings Bank*, 104 Ill. App. 3d 675, 680, 432 N.E.2d 1309, 1312 (1982). The "use of the card by the cardholder makes a contract between the cardholder and the issuer." *Garber*, 104 Ill. App. 3d at 684, 432 N.E.2d at 1315.

Mayo argues Citibank failed to present evidence of a valid contract. However, the record shows Citibank issued Mayo a credit card which she used on several occasions. This evidence supports the existence of a valid contract between the parties. The "balance transfer coupon," to which Mayo refers in her brief, was merely her original application to

obtain credit. Moreover, while testifying, Mayo acknowledged that she owed Citibank something, her only dispute concerned the amount owed.

On appeal, Mayo next argues the trial court erred by allowing Citibank to call both Paul and Mayo as witnesses. She contends Citibank failed to properly disclose its witnesses during discovery pursuant to Supreme Court Rule 213 (f) Official Reports Advance Sheet No. 26 (December 20, 2006), R. 213 (f), eff. January 1, 2007) because it did not (1) disclose that it would call Mayo as an adverse witness. Mayo asserts, because of Citibank's discovery violations, neither she nor Paul should have been permitted to testify.

Rule 213 "governs discovery by interrogatories, as well as disclosure of the identity of witnesses who will testify at trial." *White v. Garlock Sealing Technologies, LLC*, 373 Ill. App. 3d 309, 323, 869 N.E.2d 244, 255 (2007). Rule 213(f) (Official Reports Advance Sheet No. 26 (December 20, 2006), R. 213 (f), eff. January 1, 2007) provides as follows:

> Upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial and must provide the following information:
>
> (1) Lay Witnesses. A "lay witness" is a person giving only fact or lay opinion testimony. For each lay witness, the party must identify the subjects on which the witness will testify. An

answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and opinions held by the witness.

(2) Independent Expert Witnesses. An 'independent expert witness' is a person giving expert testimony who is not the party, the party's current employee, or the party's retained expert. For each independent expert witness, the party must identify the subjects on which the witness will testify and the opinions the party expects to elicit. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and opinions held by the witness.

(3) Controlled Expert Witnesses. A controlled expert witness' is a person giving expert testimony who is the party, the party's current employee, or the party's retained expert. For each controlled expert witness, the party must identify;

(i) the subject matter on which the witness will testify'

(ii) the conclusions and opinions of the witness and the bases therefore;

(iii) the qualifications of the witness; and

> (iv) any reports prepared by the witness about the case.

Rule 213's purpose "is to avoid surprise and to discourage tactical gamesmanship." *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 111, 806 N.E.2d 645, 653 (2004).

"[Its] disclosure requirements are mandatory and subject to strict compliance by the parties." *Sullivan*, 209 Ill. 2d at 109, 806 N.E.2d at 651. Further, "[t]he admission of evidence pursuant to Rule 213 is within the sound discretion of the trial court, and the court's ruling will not be disturbed absent an abuse of that discretion." *Sullivan*, 209 Ill. 2d at 109, 806 N.E.2d at 651-52.

> In determining whether the exclusion of a witness is a proper sanction for nondisclosure, a court must consider the following factors:
> (1) the surprise to the adverse party;
> (2) the prejudicial effect of the testimony;
> (3) the nature of the testimony'
> (4) the diligence of the adverse party;
> (5) the timely objection to the testimony; and
> (6) the good faith of the party calling the witness.
> *Sullivan*, 209 Ill. 2d at 110, 806 N.E.at 652.

[W]hether or not to impose sanctions lies within the sound discretion of the trial court, and that decision will not be reversed absent an abuse of discretion." *Sullivan*, 209 Ill. 2d at 110-111, 806 N.E.2d at 65.

Here, Citibank committed no discovery violation with respect to Paul's testimony. Mayo argues Paul was a controlled expert witness and, as such, Citibank was required to provide her name and address, as well as the subject matter on which she would testify, her conclusions and opinions, her qualifications and any reports she prepared about the case. The record reflects, however, that Paul was a lay witness, providing only fact or lay opinion testimony. She was not an expert and did not provide any expert opinions. As a lay witness, Citibank was only required to disclose Paul's identity, address, and the subject matter of her testimony.

The record reflects Mayo submitted interrogatories to Citibank, asking it to identify witnesses it intended to call for trial. Initially, Citibank responded that no witnesses had been assigned but that any witness would "be able to testify about balance due, account creation, account maintenance [and] record keeping process." In supplemental answers to interrogatories, Citibank disclosed the name of its witness and her address. We note, Citibank's answer to interrogatories identifies a witness named "Christina Hall' but the report of proceedings for the bench trial refers to witness "Christina Paul." The discrepancy appears to be only a scrivener's error and, on appeal, Mayo does not make an issue of the difference in surname.

The record shows Citibank sufficiently complied with the requirements of Rule 213 (f) by identifying its witness, her address, and the subject matter of her testimony. It did not commit a

discovery violation and the trial court did not abuse its discretion by permitting Paul to testify.

Mayo also argues Citibank violated Rule 213 (f) by failing to disclose that she, Mayo, would be called as an adverse witness. Mayo objected at trial when she was called to testify but the trial court overruled her objection, finding she was not surprised by Citibank calling her to testify. Mayo argues the court should not have permitted her to testify.

On appeal, Mayo's argument as to this issue is deficient. As noted, reviewing courts use six factors to determine whether the exclusion of a witness is a proper sanction for nondisclosure of the witness. *Sullivan*, 209 Ill. 2d at 110, 806 N.E.2d at 652. In her brief, Mayo failed to present any argument as to how those six factors apply to her case. As a result, this court cannot adequately determine if the trial court abused its discretion by refusing to bar Mayo's testimony. See *In re Estate of Doyle*, 362 Ill App. 3d 293, 302, 838 N.E.2d 355, 363 (2005) (Because the respondent failed to provide any argument as to how the six factors applied to the case, the reviewing court could not determine if the trial court abused its discretion in not barring the witnesses).

On appeal Mayo next argues the trial court erred by admitting Citibank's three exhibits into evidence. "It is within the trial court's discretion to decide whether evidence is relevant and admissible, and a court's determination on that issue will not be reversed absent a clear abuse of discretion." *In re Marriage of Bates*, 212 Ill. 2d 489, 522, 819 N.E.2d 714, 732 (2004).

Mayo first contends the trial court erred by admitting a copy of the "balance transfer coupon" into evidence because it violated the best evidence rule. The best evidence rule "requires an original writing be offered as evidence over secondary evidence." *Poelker v. Warrensburg Latham Community Unit School District No. 11*, 251 Ill. App. 3d270, 288, 621 N.E.2d 940, 954 (1993). "When a party seeks to introduce secondary evidence of a writing, he must first establish the prior existence of the original, its loss, destruction or unavailability, and that he diligently tried to procure the original." *Poelker*, 251 Ill. App. 3d at 288, 621 N.E.2d at 954.

Mayo provided no argument to support her position that the "balance transfer coupon" violates the best evidence rule. An appellant's brief must be supported by argument, containing the contentions of the appellant and the reasons therefore. 210 Ill. 2d R. 341 (h) (7). Points that are not argued are waived. 210 Ill. 2d R. 341 (h) (7). By failing to provide any argument, Mayo forfeited review of this issue. Moreover, we note, Mayo testified and did not dispute that she signed the "balance transfer coupon," filled it out, or mailed it in to obtain a credit card. Also, Paul testified she only had access to a copy of the "balance transfer coupon" because Citibank's records were kept for only seven years and the original had been destroyed.

Mayo also argues the "balance transfer coupon" was inadmissible by renewing her contention that it represented only part of the contract between the parties. As stated, however, the "balance transfer coupon" represents only Mayo's application for credit. Evidence of a contract between

the parties was established by Mayo's use of the credit card she obtained through the application. The trial court did not abuse its discretion by admitting the "balance transfer coupon" into evidence.

Mayo next argues the trial court erred by allowing her credit card statements into evidence. First, she maintains they are incomplete copies of only a portion of the alleged document. Specifically, Mayo notes the statement dated June 8 through July 9, 2001, contains a reference to an enclosed change in terms notice. She argues many of the statements are similarly incomplete but fails to expound further on her contention. Although the statements may reference other enclosed documents, those are separate documents and do not establish that the actual statements are incomplete.

Mayo also contends the statements were inadmissible because they violate the best evidence rule. Again, she has forfeited this contention by providing no supporting argument in her brief to this court.

Additionally, Mayo argues the statements should not have been allowed into evidence because they were an incomplete record of her account. Specifically, she notes there are no statements representing the time period from August 1998, when she opened her account and March 9, 2001. At trial, testimony showed Mayo had a zero balance on her account as of her March 9, through April 9, 2001 statement. Mayo acknowledged on cross-examination that she began making new charges to her account after April 9, 2001. The statements after

that date are the ones that are relevant to the issues raised.

Finally, Mayo argues the statements were inadmissible because they contain references to changes in terms notices but no original agreement with a "change of terms" provision was entered as evidence. The record shows Mayo continued to use her credit card even after being notified of modifications to the terms and conditions of her account. Such action indicated her acceptance of those modifications. *Garber*, 104 Ill. App. 3d at 684, 432 N.E.2d at 1315 (cardholders accept modifications if they use their credit cards after the modifications).

The trial court did not abuse its discretion by admitting Mayo's credit card statements into evidence. Mayo further argues the card agreement Citibank submitted should not have been admitted into evidence. Her contentions are also without merit as to this piece of evidence and the trial court did not abuse its discretion by allowing Citibank to introduce the card agreement into evidence.

Mayo argues the card agreement is dated more than five years after her account was originated. She provides no further explanation of how this would effect the document's admissibility. Further, the card agreement does represent the agreement between the parties that was in effect at the time Mayo defaulted on her account. Second, Mayo argues Citibank has no record of when or if the card agreement was mailed to her. The record refutes this contention and shows that Paul testified the card agreement was mailed to Mayo with her monthly statement in December 2003. Third, Mayo argues Citibank failed to submit the original credit

card agreement that provided for future modifications and, therefore, any subsequent card agreement is invalid. As already stated, the evidence reflects Mayo accepted Citibank's modifications to the parties' agreement by her continuing use the credit card. Fourth, Mayo contends the card agreement violated the best evidence rule. Again, she provides no argument to support this contention and it has been forfeited.

Finally, on appeal, Mayo argues the "instant case was brought in violation of the Fair Debt Collection Practices Act and the Truth in Lending Act." She makes similar arguments as previously raised, regarding the validity of the "balance transfer coupon" as evidence of an agreement between the parties. Her argument continues to be without merit.

The parties agree Citibank issued Mayo a credit card which she repeatedly used. At various times, Citibank modified the terms of the parties' agreement and Mayo continued to use her credit card, indicating her acceptance of the modifications. Paul testified the statements sent to Mayo showed principal balance due, payments received, and applicable interest rates. Mayo never disputed the charges, interest rates, or payment information reflected on her statements until she made a general dispute regarding everything about her account in April 2004. After that time, Citibank made no further charges to Mayo's account.

Citibank acknowledged that interest rates applicable to Mayo's purchases were not reflected in the card agreement it submitted. Although it never submitted the original terms and condition

applicable to Mayo's account, it maintains interest rates were reflected in Mayo's monthly statements. Again, Mayo never disputed any amount charged to her account, either from purchases she made or from interest charged on those purchases. Contrary to Mayo's assertions, we cannot conclude, from this record, that applicable interest rates were impermissibly absent from the "agreement creating the debt." See 15 U.S.C. §1692f (1) (a debt collector may not collect any amount, including interest, "unless such amount is expressly authorized by the agreement creating the debt or permitted by law").

Citibank's evidence was sufficient to establish an agreement between the parties and Mayo's acceptance of modifications to their agreement, including changes in interest rates. Her arguments to the contrary are without merit and the record does not reflect violation of either the Fair Debt Collection Practices Act or the Truth in Lending Act.

For the reasons stated, we affirm the trial court's judgment.

Affirmed.

McCULLOUGH, J., with MYERSCOUGH and STEIGMANN, JJ., concurring.

107519

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

January 28, 2009

Ms. Janice E. Mayo
Post Office Box 95
Forrest, IL 61741

No. 107519 - Citibank South Dakota, N.A., respondent, v. Janice E. Mayo, petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on March 4, 2009.

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
201 W. MONROE STREET
P.O. BOX 19206
SPRINGFIELD, IL 62794-9206

CLERK OF THE COURT (217)782-2586
RESEARCH DIRECTOR (217)0782-3528

DATE: 10/08/2008

RE: Citibank South Dakota, N.A. v. Mayo, Janice E.
General No.: 4-07-0932
Livingston 05LM108

TO COUNSEL:

The court today denied the petition for rehearing filed in the above entitled cause.

The mandate of this court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

DARRYL PRATSCHER, Clerk
Appellate Court
Fourth District

TO: Janice E. Mayo
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IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT
LIVINGSTON COUNTY, ILLINOIS

CITIBANK (SOUTH DAKOTA), N.A.,	)	
Plaintiff,	)	
	)	No. 05-LM-108
vs.	)	
JANICE E. MAYO,	)	
Defendant.	)	

ORDER

This matter came before the court on plaintiff's complaint demanding payment of $17,853.31 plus costs, interest and $350.00 reasonable attorneys fees and on defendant's Verified Answer.

DISCUSSION

Plaintiff's claim relates to an alleged contract admitted as Plaintiff's Exhibit #1 which was signed by the defendant and dated August 8, 1998. The agreement allowed the transfer of a balance from a MBNA America credit card in the approximate amount of $7,000.00 to an AT&T Universal Platinum Master Card. Various charges for purchases and interest after that date account for the balance claimed by plaintiff. Defendant originally denied the existence of an agreement for

repayment and that she incurred charges through the use of the credit card referred to. She also denied receiving monthly statements regarding payment on the account. At the time of trial, defendant admitted that it was her signature on Plaintiff's Exhibit #1, that charges were made on the card and the demands for payment had been received. Defendant now argues that the repayment provisions of the agreement are unspecified and that no provision for the payment of additional fees, payment fees, over-limit fees or attorneys fees were ever provided and that the agreement is invalid because no "change of terms" clause was incorporated in the agreement. Despite the arguments, defendant also asserts that she made payments of $26,823.19 to plaintiff in relation to this account and that there is an account balance owed her of $406.94. Plaintiff counters that the amounts charged on principal and interest were justified under the original request for issuance of the credit card and the attachments mailed with the card and later modifications of the original agreement concerning the interest rate which were provided to the defendant with subsequent billings. Plaintiff argues that after default by defendant the interest rate was the prime rate plus 23.99%. Plaintiff's Exhibit #2 shows that defendant continued to make purchases on the card and pay toward the amounts owed through February, 2004.

FINDINGS

1. This court has jurisdiction of the parties and subject matter.

2. Estoppel is not an effective affirmative defense to the claim of plaintiff.

3. Plaintiff's claim is not barred by the applicable statute of limitations.

4. A valid, enforceable agreement existed between Plaintiff and defendant under Federal law, the Law of the State of Illinois and the law of the State of South Dakota.

5. The amount claimed by plaintiff is correctly calculated under the terms of the Card Agreement and subsequent modification to that agreement which were accepted by defendant by reason of her use of the credit card and payments toward the existing balance.

6. The Card Agreement provides for the collection of attorneys fees if collection of the balance due required employment of an attorney who is not a salaried employee of plaintiff. The $350.00 claimed as attorneys fees is found to be fair and reasonable after consideration of the complexity of the work involved, the hours involved, the hourly rate for similar work performed in this area, the experience of the lawyer and all other guidelines.

WHEREFORE, judgment is entered against the defendant in favor of plaintiff in the amount of $17,853.31 plus the cost of this proceeding and

$350.00 in reasonable attorneys fees. The judgment amount represents the total amount due plaintiff from defendant through February 22, 2007. Execution may issue.

Date: 3/30/07

s/ Robert M. Travers
JUDGE